

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

APR 09 2013

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

JOHN B. KIMBLE,

Plaintiff,

v.

DEAN WITHERS, et al.,

Defendants.

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Civil Action No. 5:12cv00110

By: Michael F. Urbanski
United States District Judge

ORDER

This matter was referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for proposed findings of fact and a recommended disposition. The magistrate judge filed a report and recommendation on February 5, 2013, recommending that this case be dismissed for failure to prosecute. Plaintiff, who is proceeding pro se, filed an objection to the report and recommendation.

The court has reviewed the magistrate judge's report, the objection to the report, the briefs filed by the parties, and the relevant case law and, in so doing, made a de novo determination of those portions of the report to which the plaintiff objected. The court finds that the magistrate judge was correct in concluding that this case should be dismissed for failure to prosecute. A pro se litigant can only represent his own interests. Plaintiff cannot maintain this action pro se on behalf of his mother's estate, which appears from plaintiff's filings to have at least one creditor. See Pridgen v. Andresen, 113 F.3d 391, 393 (2d Cir. 1997) (administrator of estate cannot proceed pro se in federal court when estate has other beneficiaries or creditors); see also Brewster v. Wells Fargo Bank, N.A., No. 11-1232-JDB-egb, 2012 WL 4024749, at *2, 2 n.4 (W.D. Tenn. Sept. 12, 2012); Kenney v. Floyd, No. 10-cv-181-PB, 2010 WL 1994896, at *1-2

(D.N.H. May 18, 2010). By Order entered January 8, 2013, the court required plaintiff to secure counsel of record and file any amended complaint by January 31, 2013. He failed to do so. Accordingly, the court accepts the magistrate judge's recommendation that plaintiff's complaint should be dismissed for failure to prosecute.

It is therefore **ORDERED** and **ADJUDGED** that the report and recommendation (Dkt. # 16) is **ADOPTED in its entirety** and this matter is **DISMISSED** pursuant to Federal Rule of Civil Procedure 41(b) for plaintiff's failure to prosecute and **STRICKEN** from the active docket of the court.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered: April 8, 2013

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge